IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.2693 OF 2006

Rajiv Arvind Gandhi ...Petitioner.
V/s.
Mrs.Seema Ramesh Bora & Anr. ...Respondents.

Shri J.B.Kocheta, adv. for the Petitioner.
Shri Avinash Avhad, adv. for the Respondent No.1.
Ms.S.V.Gajare, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 4th April, 2007.

P.C.:

1. Heard Mr.Kocheta the learned counsel for the petitioner and Mr.Avinash Avhad the learned counsel for the Respondent No.1.

2. The petitioner had issued a cheque of Rs.1 lakh in favour of the respondent no.1. As it was dishonoured, after issuing notice to the petitioner, the respondent no.1 filed a complaint under Section 138 of the Negotiable Instruments Act. Petitioner was convicted by the Trial Court by the judgment dated 28-4-2006 and he was sentenced to pay fine of Rs.1,50,000/- and in default to undergo S.I. for one year. Out of the fine amount, an amount of Rs.1,30,000/- was to be paid to the complainant as compensation under Section 357(1) of the Cr.P.C. It is material to note that no substantive sentence of

imprisonment was awarded. The petitioner preferred an appeal before the Sessions Court and sought a stay to the said order. Vide the order dated 9-10-2006, the Additional Sessions Judge stayed the implementation of the sentence subject to the petitioner depositing amount of Rs.75,000/- on or before 20th October, 2006. Thereafter the petitioner sought extension of time for payment, which was rejected on 14-11-2006. Against that order petitioner preferred the present writ petition.

3. Mr.Kocheta contended that the trial Court could not impose fine more than Rs.5,000/- and therefore, order itself is illegal. It appears that the trial Court is a Civil Judge Senior Division but it is not clear that he is vested with J.M.F.C. or Chief Judicial Magistrate. If the order of sentence passed by him is beyond the jurisdiction that question can be raised in the appeal against the conviction particularly when the appeal is still pending before the Sessions Court. It is also material to note that the present writ petition is not against the said conviction and sentence but against the order passed by the Sessions Court directing the petitioner to deposit 50% of the fine amount, which is infact much less than the cheque amount. Mr.Kocheta contended that in some matters this Court had directed to deposit 25% of the amount. That may be in view of

the facts of the individual case but that does not lay down law in this respect. The learned counsel for the respondent contends that the petitioner has taken huge loans from number of people and has failed to make the payment. Ofcourse, there is no record about the same and it is not necessary to go into that question. It appears that in view of the fact that the trial Court has not awarded any substantive sentence of imprisonment, direction given by the Sessions Court to deposit atleast 50% of the fine amount appears to be justified. I do not see any reason to interfere by invoking extraordinary writ jurisdiction.

4. Writ petition stands rejected summarily.

5. At this stage Mr.Kocheta seeks sometime to deposit the balance amount of Rs.60,000/- as per the order of the Sessions Court. The learned counsel for the respondent has no objection to grant one month’s time therefore, the petitioner is granted one month’s time to comply with the directions given by the Sessions Court. No further extension shall be granted in this respect.

6. Writ petition stands disposed off accordingly.

(J.H.Bhatia,J.)